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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,626	01/15/2004	James R. Robellard	287.00070101	6109

26813 7590 09/26/2006

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/758,626	Applicant(s) ROBELLARD ET AL.	
	Examiner Stephen J. Castellano	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 23-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18-22 and 26-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10-6-05</u> | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 13, 15, 16, 18 and 30-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Giarrante.

Giarrante discloses a paint can 20 comprising a body 20 with a floor sloped at an angle of 0 degrees and a roller surface (shelf 33) movably coupled to the body as shelf 33 is part of removable cover 21 attached by a snap fit connection to the body. Lid (cover 23) covers an open top of the container body to enclose the roller surface within an enclosed space. The lowest portion of the roller surface is located above the volume of liquid when the paint can is filled to a level just below the base 22. The body includes cover 21 and the open top is the open top of cover 21 which is covered and sealed by cover 23.

Claims 1-4, 7-9, 11-16, 18, 30 and 32-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Stern et al. (Stern).

Stern discloses a container for paint having a body, a first roller surface 31 pivotally coupled to the container body by being pivotally attached to a lid.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 10, 12, 13, 15, 16, 18-22 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giarrante.

If it should be deemed that a sloped floor must be inclined, then Giarrante doesn't disclose an inclined floor, that is, a slope angle other than 0, 180 or multiples of 180 degrees. Official notice is taken that sloped and inclined floors are well known in the paint container art. It would have been obvious to modify the floor of Giarrante to be sloped and inclined to provide for the collection of residue paint amounts in specific areas of the floor rather than distributed evenly over a flat floor (0 degree angle surface) to provide easier brush and roller loading.

Official notice is taken that body pour spouts, perforated roller surfaces and X-shaped support rib patterns are well known in the container art. It would have been obvious to add these features for providing controlled flow when pouring, a means to remove excess paint and a reinforcement means for a floor, respectively.

Re claim 12, the roller surface angle is obvious as a matter of design choice, steeper angles allowing faster draining of excess liquid while shallow angles allow a more stable resting surface.

Claims 8, 9, 11, 14, 26-29, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giarrante in view of Stern.

Re claims 8, 9 and 26-29, Giarrante discloses the invention except for a rectangular container with pairs of sidewalls. Stern teaches a rectangular container with pairs of sidewalls. It would have been obvious as a matter of design choice to modify the shape of the container to be rectangular for efficient packing in rectangular boxes.


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Re claims 11 14, 28, 34 and 35, Giarrante discloses the invention except for the roller surface being pivotally mounted. Stern discloses a pivotally mounted roller surface. It would have been obvious to modify the surface to pivot to provide alternate positions for the roller surface to modify the draining characteristics as needed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc